| 1 2 3 4 5 6 7 8 9 10 | Peter R. Afrasiabi, Esq. (Bar No. 193336) pafrasiabi@onellp.com John Tehranian, Esq. (Bar No. 211616) jtehranian@onellp.com ONE LLP 4000 MacArthur Blvd. East Tower, Suite 500 Newport Beach, CA 92660 Telephone: (949) 502-2870 Facsimile: (949) 258-5081 Joanna Ardalan (Bar No. 285384) jardalan@onellp.com ONE LLP 9301 Wilshire Blvd., Penthouse Beverly Hills, CA 90210 Telephone: (310) 437-8665 Facsimile: (310) 943-2085 Attorneys for Plaintiff, Mavrix Photographs LLC | |
|---|---|------------------------------------|
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| 13 | UNITED STATES DISTRICT COURT | |
| 14 | CENTRAL DISTRICT OF CALIFORNIA | |
| 15 | WESTERN DIVISION | |
| 16 | | |
| 17 | MAVRIX PHOTOGRAPHS LLC, a limited | Case No. |
| 18 | liability company, | COMPLAINT FOR COPYRIGHT |
| 19 | Plaintiff, | INFRINGEMENT DEMAND FOR HIDN TRIAL |
| 20 | V. | DEMAND FOR JURY TRIAL |
| 21 | DMG MEDIA LIMITED, a U.K. limited | |
| 22 | DMG MEDIA LIMITED, a U.K. limited company; ASSOCIATED NEWSPAPERS, LTD., a U.K. limited company; and DOES 1-10 INCLUSIVE, | |
| 23 | 1-10 ÍNCLUSIVE, | |
| 24 | Defendants. | |
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| 28 | | |
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COMPLAINT

Mavrix Photographs LLC ("Mavrix"), by and through its attorneys of record, complains against DMG Media Limited ("DMG"), Associated Newspapers Ltd. ("Associated") and DOES 1-10 (collectively "Defendants") as follows:

JURISDICTION AND VENUE

- 1. This is a civil action against Defendants for their acts of copyright infringement in violation of the United States Copyright Act, 17 U.S.C. §§ 101 *et seq*. This Court has subject matter jurisdiction over the copyright infringement under 28 U.S.C. § 1331, 17 U.S.C. § 501(a), and 28 U.S.C. § 1338(a).
- 2. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(a) in that the claim arises in this Judicial District, the Defendants may be found and transact business in this Judicial District, and the injury suffered by Plaintiff took place in this Judicial District. Defendants are subject to the general and specific personal jurisdiction of this Court because of their contacts with the State of California.

PARTIES

- 3. Plaintiff Mavrix is a limited liability company existing under the laws of California, with its principal place of business in Los Angeles, California.
- 4. Plaintiff is informed and believes and, upon such, alleges that DMG Media Limited, is a limited company with its principal place of business in London, England. On information and belief, DMG also has a physical presence in Los Angeles, California as at least twelve people on the social media site Linkedin identify the Daily Mail as their current employer and reside in the Los Angeles area.
- 5. Plaintiff is informed and believes and, upon such, alleges that Associated Newspapers, Ltd., is a limited company with its principal place of business in London, England.
- 6. DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of Court to amend this Complaint and insert the true names and capacities of said Defendants when the same have been ascertained. Plaintiff is informed and believes and, upon such, alleges that each of the

Defendants designated herein as a "DOE" is legally responsible in some manner for the events and happenings herein alleged, and that Plaintiff's damages as alleged herein were proximately caused by such Defendants.

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STATEMENT OF FACTS

Mavrix Photo, Inc. (MPI) is a prominent celebrity photography agency that

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The Photos Forming the Subject Matter of This Dispute

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licenses its photographs on an exclusive and non-exclusive basis to a multitude of top-tier

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media outlets, including, the world's leading newspapers, television programs and magazines, like People or US Weekly. MPI has licensed individual images of celebrities

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for over \$100,000 to major content outlets.

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8. MPI made certain photographs of well-known celebrities such as Kanye West,

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Kourtney Kardashian, Kate Hudson, Christina Aguilera, Britney Spears, Selma Blair, Justin Theroux, Rebel Wilson, Kate Beckinsale, James Van Der Beek, Ne-Yo, Bella Thorne,

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Kelly Ripa, Joanna Krupa, and January Jones, available for licensing on an individual or

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blanket basis through MPI since the first publication of the images. These images are

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collectively referred to herein as the "Celebrity Photos."

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9. MPI filed for copyright registration of the Celebrity Photos within 90 days of their authorship and first publication. A true and correct copies of the Copyright

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registrations/applications are attached as Exhibit A.

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10. MPI has assigned to Plaintiff Mavrix all rights (including the copyright) to the Celebrity Photos.

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The Defendants and the Marketplace

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11. On information and belief, Defendants DMG and Associated are sophisticated

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and successful publishers serving readers through its newspaper "The Daily Mail" and its

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Mail Online website, www.dailymail.co.uk ("Daily Mail website" or "Daily Mail Online").

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DMG touts itself as "an international multi-channel media company which is home to some

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of the UK's most popular brands." The print version of the Daily Mail is sold in the United

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States, in California and in Los Angeles specifically. Moreover, according to its own

website "DMG reaches nearly 35.3 million people a month or 68% of the GB adult population." Daily Mail Online is "the world's largest English speaking newspaper website with more than 211.1 million monthly unique visitors globally" and "[i]t is also America's third biggest online newspaper with US traffic of 69.4 million monthly unique visitors and almost two million daily visits." On information and belief, many of these visitors are based in California. On information and belief Associated is a subsidiary of DMG. Daily Mail Online's Terms of Use represent that Associated operates the website and that the user is entering into an agreement with Associated. Moreover, it is listed as the copyright owner of Daily Mail Online.

- 12. On information and belief, Defendants' business model depends on copyright laws to protect its own content and therefore is knowledgeable about the strictures of copyright law. Defendants know from prior communications with Mavrix's owners and/or lawyers that Mavrix's copyrights should be respected, but Defendants have continued to infringe the copyrights in said photographs.
- 13. On information and belief, Defendants' goal of reaching readers around the United States and beyond is evident in the advertising materials displayed, which includes some that target Southern California specifically.
- 14. Plaintiff alleges, on information and belief, that Defendants owned and operated Dailymail.co.uk at all times relevant to this dispute.
- 15. Defendants have, on information and belief, violated federal law by willfully infringing Mavrix copyrights to at least 69 different photographs on Daily Mail Online. Attached hereto as Exhibit B are true and correct copies of numerous screenshots showing Defendants' use of the Celebrity Photos on Dailymail.co.uk.
- 16. Specifically, Defendants reproduced, distributed and publicly displayed at least 69 of the Celebrity Photos, and derivatives thereof, on their website without permission, consent, or license.

- 17. On information and belief, Defendants' reproduction, distribution and public display of at least 69 of Plaintiff's photographs, and derivatives thereof, continues unabated to this very day.
- 18. On information and belief, Defendants herein have driven significant traffic to dailymail.co.uk in large part due to the presence of the sought after and searched-for celebrity images that frame this dispute. All of this traffic translates into substantial ill-gotten commercial advantage and revenue generation for Defendants as a direct consequence of their infringing actions.
- 19. MPI previously filed suit against Associated Newspapers Limited for copyright infringement when it posted unlicensed MPI photographs on the Daily Mail Online at dailymail.co.uk without consent or license. Like this case, Defendants posted numerous MPI photographs of celebrities, including Pamela Anderson, Robbie Williams, Devon James, Roger Daltrey and Halle Berry. Defendants' unabashed infringement of Mavrix's photographs yet again shows at least a reckless disregard for Plaintiff's copyrights.

FIRST CLAIM FOR RELIEF

(Copyright Infringement, 17 U.S.C. § 501)

- 20. Plaintiff Mavrix incorporates here by reference the allegations in paragraphs 1 through 19 above.
- 21. Mavrix is the rightsholder to the copyrights of the Celebrity Photos, which substantially consist of wholly original material that constitutes copyrightable subject matter under the laws of the United States. MPI and Mavrix have complied in all respects with the Copyright Act and all of the laws of the United States governing copyrights. The Celebrity Photos have been timely registered with the United States Copyright Office, as shown in Exhibit A.
- 22. All rights, including copyrights, in and to the Celebrity Photos protected were assigned to Plaintiff on or around December 29, 2015.

- 23. Defendants have directly, vicariously and/or contributorily infringed, and unless enjoined, will continue to infringe Mavrix's copyrights by reproducing, displaying, distributing and utilizing the Celebrity Photos for purposes of trade in violation of 17 U.S.C. § 501 *et seq*.
- 24. Defendants have willfully infringed, and unless enjoined, will continue to infringe Mavrix's copyrights by knowingly reproducing, displaying, distributing and utilizing the Celebrity Photos for purposes of trade and by doing so knowing that it has no license to said photos from Mavrix and has not paid for said photos to Mavrix, which acts have even continued after Mavrix has notified Defendants of said acts of infringement. On information and belief, Defendants' acts of infringement are willful as alleged herein and also because, inter alia, the Defendants are sophisticated online publishers with full knowledge of the strictures of federal copyright law and the basic requirements for licensing the use of copyrighted content for commercial exploitation.
- 25. On information and belief, Defendants, despite such knowledge, willfully reproduced, publicly distributed and publicly displayed the Celebrity Photos on dailymail.co.uk.
- 26. Defendants have received substantial benefits in connection with the unauthorized reproduction, display, distribution and utilization of the Celebrity Photos for purposes of trade, including by increasing the traffic to Defendants' website and, thus, increasing the advertising fees realized.
- 27. The actions of Defendants were and are continuing to be performed without the permission, license or consent of Mavrix.
- 28. The wrongful acts of Defendants have caused, and are causing, great injury to Plaintiff, of which damages cannot be accurately computed, and unless this Court restrains Defendants from further commission of said acts, Mavrix will suffer irreparable injury, for all of which it is without an adequate remedy at law. Accordingly, Plaintiff seeks a declaration that Defendants are infringing Mavrix's copyrights and an order under 17 U.S.C. § 502 enjoining Defendants from any further infringement of Plaintiff's copyrights.

- 29. As a result of the acts of Defendants alleged herein, Mavrix has suffered and is suffering substantial damage to its business in the form of diversion of trade, loss of profits, injury to goodwill and reputation, and the dilution of the value of its rights, all of which are not yet fully ascertainable.
- 30. Because of the willful nature of the copyright infringement, Plaintiff is entitled to an award of statutory damages of up to \$150,000 per work infringed.
- 31. Plaintiff has identified at least 69 works infringed by Defendants, which occurred by way of reproduction, public distribution and public display of the Celebrity Photos on dailymail.co.uk, the Daily Mail Online. Therefore, Mavrix is entitled to an award of \$10.35 million in statutory damages.
- 32. Alternatively, at its discretion, Mavrix is entitled to actual damages in an amount to be proven at trial for the infringement of all works at issue.
 - 33. Plaintiff is also entitled to its attorney's fees in prosecuting this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

- 1. The Defendants, their officers, agents, servants, employees, representatives, and attorneys, and all person in active concert or participation with them, be permanently enjoined from designing, copying, reproducing, displaying, promoting, advertising, distributing, or selling, or any other form of dealing or transaction in, any and all advertising and promotional materials, print media, signs, Internet websites, or any other media, either now known or hereafter devised, bearing any design or mark which infringe, contributorily infringe, or vicariously infringe upon Plaintiff Mavrix's rights in the photographs at issue.
- 2. Defendants be held liable to Plaintiff in statutory damages for copyright infringement, including willful infringement, in accordance with 17 U.S.C. §§ 504(a)(2) & (c) and for costs, interest and reasonable attorney's fees pursuant to 17 U.S.C. § 505.

- 3. An accounting be made for all profits, income, receipts or other benefit derived by Defendants from the reproduction, copying, display, promotion, distribution or sale of products and services, or other media, either now known or hereafter devised, that improperly or unlawfully infringes upon Plaintiff's copyrights pursuant to 17 U.S.C. §§ 504 (a)(1) & (b).
- 4. Requiring Defendants to account for and pay over to Plaintiff all profits derived by Defendants from their acts of copyright infringement and to reimburse Plaintiff for all damages suffered by Plaintiff by reasons of Defendant's acts, pursuant to 17 U.S.C. §§ 504 (a)(1) & (b).
- 5. Actual damages for copyright infringement pursuant to 17 U.S.C. §§ 504 (a)(1) & (b).
- 6. That Plaintiff be awarded any such other and further relief as the Court may deem just and appropriate.

Dated: January 25, 2016

ONE LLP

By:/s/ Joanna Ardalan

Peter R. Afrasiabi, Esq. John Tehranian, Esq. Joanna Ardalan, Esq. Attorneys for Plaintiff, Mavrix Photographs LLC

DEMAND FOR JURY TRIAL Plaintiff Mavrix Photographs LLC hereby demands trial by jury of all issues so triable under the law. Dated: January 25, 2016 **ONE LLP** By:/s/ Joanna Ardalan Peter R. Afrasiabi, Esq. John Tehranian, Esq. Joanna Ardalan, Esq. Attorneys for Plaintiff, Mavrix Photographs LLC